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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,558	12/23/2000	Mehmet C. Oz	20076-51	5175
54042	7590	10/25/2005	EXAMINER	
WOLF, BLOCK, SHORR AND SOLIS-COHEN LLP 250 PARK AVENUE 10TH FLOOR NEW YORK, NY 10177			WOO, JULIAN W	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/747,558

Applicant(s)

OZ ET AL.

Examiner

Julian W. Woo

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 30 September 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

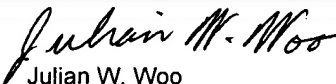
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 37, 40-42, 44-46, 48, 49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Julian W. Woo
Primary Examiner
Art Unit: 3731

7 (b) continued.

Claims 37, 38, 40, 42-44, and 46-48 would be rejected under 35 U.S.C. 102(e) as being anticipated by Yoon (5,620,452). Yoon discloses, in figure 16 and in col. 1, lines 22-58 and col. 3, lines 6-40, and col. 5, lines 48-61, a fastener having a first plate (18), a pair of laterally-spaced apart penetrating elements (40) on the first plate, a second plate (16), a pair of holes (36) on the second plate for receiving the penetrating elements, and a hinge (at 14), where the first plate is free of additional penetrating elements spaced from the pair of laterally-spaced penetrating elements, where the penetrating elements pass entirely through the holes, where the fastener is composed of a biocompatible, non-immunogenic material (e.g., titanium), and where the fastener is adapted to be introduced via a percutaneous, endoscopic approach, where the second plate has an axial and lateral direction, where the first and second plates are joined by a laterally oriented hinge (14) and the axial direction is perpendicular to the hinge. Note: The introductory statement of intended use ("for securing coapted valve leaflets together") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Yoon's device, which is capable of being used as claimed if one desires to do so.

Claims 41, 45, and 49 would be rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon. Yoon discloses the invention substantially as claimed, but does not specify the plate dimensions as claimed. Nevertheless, it would have been a matter of design choice to dimension the plates in the ranges of dimensions as claimed. The choices would be dependent upon the desired size for the fastener and upon the place of application for the fastener.